

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,

Plaintiff,

v.

13-CV-0256-A

ERIC HOLDER, JR., individually  
and as Attorney General  
of the United States,  
PREETINDER S. BHARARA, individually  
and as United States Attorney for the  
Southern District of New York,  
JANIS M. ECHENBERG and  
CHRISTOPHER D. FRYE,  
Individually, and as in their  
capacity as representatives  
of the United States Attorney's  
Office for the Southern District  
of New York,

Defendants.

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**AFFIDAVIT**

Mary E. Fleming, being duly sworn, deposes and says that:

1. I am an Assistant United States Attorney in the Western District of New York, and I submit this affidavit in opposition to the plaintiff's motion for expedited discovery in the above referenced matter.

2. Plaintiff, Paul D. Ceglia ("Ceglia"), is seeking the deposition of Mark Zuckerberg ("Zuckerberg"), President and Chief Executive Officer of Facebook, Inc. ("Facebook"), two weeks before a hearing which is scheduled for Friday, May 10, 2013, on plaintiff's request for a temporary restraining order and preliminary injunction. Plaintiff's request for expedited discovery should be denied as he has failed to establish that the request is reasonable or that there is good cause for the request.

3. Ceglia is familiar to this court as he has brought an action against Zuckerberg and Facebook(10-CV-569A)("Facebook litigation") claiming he entered into a contract with Zuckerberg (known as the Work for Hire document) which granted him 50 percent ownership in Facebook for Zuckerberg agreeing to perform certain programming work for Ceglia.

4. Ceglia is also the defendant in a criminal action pending against him in the Southern District of New York (12-CR-876) charging him with mail and wire fraud relating to Ceglia's fraudulent creation of the Work for Hire Document, manufacture of emails to support this fraudulent Work for Hire document, and destruction of evidence, all in support of his lawsuit against Zuckerberg.

5. Ceglia has now brought a second civil action against the Attorney General of the United States and prosecutors in the Southern District of New York claiming that his First Amendment rights have been chilled by the Southern District of New York criminal prosecution. He seeks a Temporary Restraining Order, a preliminary injunction and expedited discovery.

6. After this instant action was commenced, Magistrate Judge Leslie Foschio issued a 155 page Report and Recommendation ("R&R") recommending dismissal of the Ceglia lawsuit against Zuckerberg and Facebook. The R&R recommends dismissal of the complaint because the Work for Hire document is a recently created fabrication and on account of Ceglia's spoliation of evidence. Dkt. #651.

7. This R&R discusses in detail the reasons why the Work for Hire document and the supporting emails are forgeries or fabrications. It analyzes ink-dating; printing variations, such as fonts, typesetting and formatting inconsistencies between pages 1 and 2 of the Work for Hire document; printer toner and paper variations; staple holes; handwriting of initials and signatures; digital footprints; back-dating of emails;

formatting inconsistencies of emails, factual inaccuracies, etc.

Judge Foschio concludes:

To summarize, based on the evidence in the record, it is highly probable and reasonably certain that the Work for Hire Document and the supporting e-mails were fabricated for the express purpose of filing the instant action. Plaintiff's arguments in opposition largely consist of self-defeating inconsistencies, serving only to establish the fraudulent nature of the Work for Hire Document and supporting e-mails. Defendants have thus established by clear and convincing evidence the Work for Hire Document and supporting e-mails are fabrications such the Defendants' Motion to Dismiss should be GRANTED, and the case dismissed with prejudice.

See Dkt. #651, pp.118-119.

8. It is the Government's position that Ceglia seeks the deposition of Zuckerberg solely to obtain an advantage that would not be afforded to him in the criminal action pending against him in the Southern District of New York, specifically, discovery of the Government's witnesses. However, Zuckerberg has already signed a Declaration attesting to the fact that he never signed or entered into an alleged contract between him and Ceglia (the Work for Hire Document) and that alleged emails to and from Ceglia relating to the Work for Hire Document were not received by or written by him. Therefore, Ceglia's request to depose Zuckerberg will be cumulative since he has already stated in a Declaration under penalty of perjury the information Ceglia seeks to obtain from him via deposition. Attached as Exhibit A

is a copy of the Zuckerberg Declaration in the Ceglia v. Zuckerberg matter, 10-CV-569A. Dkt. #46.

9. Moreover, Ceglia has repeatedly sought the deposition testimony of Zuckerberg but has been denied the relief by Magistrate Judge Foschio in the Facebook litigation. On April 4, 2012, during a 16(b) conference and oral argument of the defendants' motion to stay discovery, Judge Foschio ruled that discovery in general should be stayed other than the depositions of the experts in the matter, and despite repeated requests by counsel for Ceglia, denied Ceglia's request to depose Zuckerberg. Attached as Exhibit B are copies of excerpts from the hearing transcript taken on April 4, 2012, in the Ceglia v. Zuckerberg matter, 10-CV-569A, discussing the denial by Judge Foschio of Ceglia's request to depose Zuckerberg. Dkt. #s 348, 350.

10. Undeterred, Ceglia now makes another improper attempt to seek the deposition of Zuckerberg for the sole purpose of seeking discovery which would not be afforded him in the criminal case pending in the Southern District of New York.

11. As a result, Ceglia's request for expedited discovery should be denied as he has failed to demonstrate good cause and

the request is not reasonable as it flouts both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

12. In paragraph 6 of Mr. Argentieri's April 25, 2013 Declaration, he indicates that I told him on April 25, 2013 that the Government took no position on the issue of the Zuckerberg deposition. I did speak to Mr. Argentieri on April 25. In that conversation, I told him that I believed that any discussion of taking the deposition of Zuckerberg was premature. I did not intend to indicate that the Government takes no position on the motion to depose Zuckerberg. For the reasons set forth herein,

and in the accompanying Memorandum of Law, the motion to depose Zuckerberg should be denied.

DATED: Buffalo, New York April 30, 2013.

S/MARY E. FLEMING  
Mary E. Fleming

Sworn to before me this  
30th day of April, 2013.

S/Danielle Bankoske  
COMMISSIONER OF DEEDS  
In And For The City Of Buffalo, NY  
My Commission Expires Dec. 31, 2014.